85-659

Supreme Court, U.S.
FILED
OCT 17 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ALWIN E. HOPFMANN,

Petitioner

v.

UNITED STATES FEDERAL ELECTION COMMISSION,
and
EDWARD M. KENNEDY,
and

THE COMMITTEE TO RE-ELECT SENATOR KENNEDY,

Respondents,

PETITION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Appendix

Laurence A. Elgin
2762 Woodley Place, N.W.
Washington, D.C. 20008
(202) 628-1114

BEST AVAILABLE COPY

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D. C. 20463

EXPEDITED FIRST GENERAL COUNSEL'S REPORT

COMPLAINANT'S NAME: ALWIN E. HOPFMANN

RESPONDENTS' NAMES: SENATOR EDWARD M. KENNEDY AND THE COMMITTEE TO RE-ELECT SENATOR KENNEDY

INTERNAL REPORTS CHECKED: NONE

FEDERAL AGENCIES CHECKED; NONE

SUMMARY OF ALLEGATIONS

On September 13, 1982, Alwin Hopfmann filed a complaint alleging numerous violations by the respondents. Complainant's principle assertion is that the Massachusetts state Democratic Party's convention held during May 21-22, 1982, for the purpose of "endorsing candidates" should have been treated as the primary election. Complainant argues

that the Charter of the Democratic Party of Massachusetts which provides for the endorsement of a candidate who receives more than fifteen percent of the vote of the convention delegates[1] establishes a de facto nominating process which concludes whenever only one candidate emerges from the convention with at least fifteen percent of the vote. Under Massachusetts law, no candidate for a primary election will be placed upon the ballot who does not comply with the fifteen percent rule of the party. [2] In this instance, only Senator Kennedy emerged from the convention with at least

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1/ Charter of the Democratic Party of the Commonwealth of Massachusetts, Article Six, Section III, (adopted April 11, 1981).

2/ Mass. Gen. Laws Ann., ch. 53, Sec. 44 (West 1975).

fifteen percent of of the delegate votes for the Democratic Party's endorsement for Senate. Complainant rationalizes that since no other candidates were allowed to be placed on the ballot, the action taken by the Party's convention delegates amounted to mroe than a mere endorsement of Senator Kennedy's candidacy and was, in fact, a nomination.

If, as complainant urges, the convention completed the nomination process, Senator Kennedy's coimmittee violated numerous reporting requirements 3 as well as the contribution limitations.4/

3/ 2 U.S.C. Sec. 434(a)(2)(A)(i), 434(a)(6)(A) and 434(b).

4/ This allegation is based upon the presumption that if the primary election occurred with the vote of the convention delegates on May 22, 1982, rather than on September 14, 1982, then

FACTUAL AND LEGAL ANALYSIS

Article 6, Section III of the Charter of the Democratic Party of Massachusetts which is entitled "Endorsing Candidates" provides:

> There shall be a State convention in even-numbered years for the purpose of endorsing candidates for statewise offices in those years in whichg such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated by the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular vote may challenge the Convention endorsement in the State Primary Election.

Chapter 53, Section 44 of the

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all contributions received subsequent toMay 22, 1982, would count against the general election limitations to the extent that they were not designated to retire primary campaign debts.

Massachusetts General Laws provides, in pertinent part, that "[t]he nomination of candidates for nomination at state primaries shall be by nomination papers." On April 5, 1982, Massachusetts Governor King had before him Massachusetts House Bill No. 5852 which, if approved by him would have added an additional sentence following the first sentence of Chapter 53, Section 44, supra, stating "[n]otwithstanding any aprty charter, rule or by-law, any candidate submitting nomination papers pursuant to this chapter shall be a candidate for nomination at the state primary." Clearly, the effect of this Bill would have been to allow candidates, in addition to those who had received at least 15 percent of the convention vote, to challenge the convention's endorsement on the primary

election ballot. Due to constitutional questions perceived by the Governor int he effect of the proposed legislation, he requested, and received, an Advisory Opinion from the Supreme Judicial Court of Massachusetts. Opinion of the Justices, 385 Mass. 1201 (1982).

Two questions were put before the court:

1. does the fifteen percent rule in the Democratic Charter supersede the current provision of the General Law, Chapter 53, Section 44, or can a candidate be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of the vote at the party convention?

2. Would enactment of H. 5852 allow a candidate to be placed on the

Democraic State Primary Ballot by nomination papers without having received fifteen percent of the vote at the party convention?

The Court declined to render an opinion to question one due to the lack of a "solemn occasion authorizing [the court] to answer" (the standard utilized by the Massachusetts Court for rendering Advisory Opinions).

As to the second question, the Court concluded that "[i]f House No. 5852 were approved, G.L. c. 53, Sec. 44, as thereby amended, would abridge the constitutional rights of the Democratic Party and its members to associate by allowing candidates to be placed on the state primary ballot in contravention of the party's charter." Governor King declined to sign the Bill after having received this

Opinion.

Complainant asserts, then, that the Democratic Party's Charter is given the full effect of state law, and because no other candidate at the convention received at least fifteen percent of the convention vote for the endorsement for the party's nominationfor the U.S. Senate seat, the nomination effectively occurred with that vote by the convention delegates. Complainant has attempted to draw a parallel between the situation in Massachusetts and that in Connecticut. In that regard, he points to the analysis set forth in Advisory Opinion 1976-58.

There, the party had adopted a twenty percent rule for convention voting. The state's statute provided that whenever only one candidate received at least twenty percent of the convention

vote "no primary shall be held by such party for such office and the party--endorsed candidate for such office shall be deemed (emphasis added) to have been lawfully chosen as the nominee of such party for such office." Massachusetts, on the other hand, is not so restrictive. The primary election contest in Massachusetts does not in any circumstances terminate with the vote of the party's convention delegates. Massachusetts still holds a primary election. Certification that a candidate is his or her party's nominee must await the results of the primary contest. The contest is not a hollow procedure because the Massachusetts General Laws provide

for write-in campaigns.5/ In the present case, therefore, although Senator Kennedy was the only Senate candidate to emerge from the convention with at least fifteen percent of the votre, he still was not the Democraic Party's nominee. The powers provided the convention by the Democratic Charter do not include the power to nominate candidates; it may merely endorse a candidate. Until the voters spoke at the polls in September, there was no Democratic Party nominee for the United States Senate from Massachusetts. There was, until the balloting was completed, a possibility that a

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5/ "A person whose name is not printed on a state primary ballot as a candidate for an office, but who receives sufficient votes to nominate him therefore" and who accepts the nomination shall be placed on the ballot for the ensuing election. Mass. Gen. Laws Ann., ch. 53, Sec. 3 (West 1975).

write-in campaign could be mounted to effectively challenge the action of the convention which endorsed Senator Kennedy. 6/ Because the convention is merely a "winnowing-out" process and does not under any circumstances result in the nomination of a candidate until after the primary election is held, the convention

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6/ The United States Supreme Court has recognized the interests of the state in limiting the number of persons on the ballot in order to avoid voter confusion, American Party of Texas v. White, 415 U.S. 767 (1974), and the associational rights of a political party to determine who will appear on a general election ballot as the candidate of that party, Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1978). Although teh Massachusetts Democratic Party has not chosen to nominate a candidate at the convention, it has chosen to reduce the number of candidates who may appear as having its endorsement in the primary election. The state's acquiesence in this process would appear to furtner the interests of the state as well as the associational rights of the party.

should not be considered as an election for purposes of the Federal Election Campaign Act of 1971, as amended. 7/

7/ Indeed, in AO 1978-79, the Commission considered the effect of Louisiana's statute which provided for the termination of the general election process where a candidate, in an open primary contest, received a majority of the vote in the primary. Because the state did not certify that candidate as the winner of the general election until after the scheduled date of the general election, the Commission concluded that the candidate could, although unopposed, still qualify for separate contribution limitations. In addition, the Commission has previuslynoted that the question of whether a party convention is an "election" with "authority to nominate a candidate" turns on an analysis of state law regarding the power and role of such a convention in the nomination of candidates for Federaloffice. See also Advisory Opinion 1976-58 (Connecticut statute providing that no primary shall be held when only one candidate receives at least twenty percent of the vote; "the 'endorsed candidate' ... shall be deemed to have been lawfully chosen as the nominee of such party for such office."); AO 1978-25 (Colorado and Minnesota's political conventions are not elections since they "do not have authority under state law to nominate candidates ...");

Accordingly, the General Counsel recommends that the Commission determine that there is no reason to believe that Senator Edward M. Kennedy or the Committee to Re-Elect Senator Kennedy violated 2 U.S.C. Secs. 434(a)(2)(A)(i), 434(a)(6)(A), 434(b) or 441a(f).

Recommendation - MUR 1468(82)

1. Find no reason to believe that respondents Senator Edward M. Kennedy or the Committee to Re-Elect Senator Kennedy violated 2 U.S.C. 434(a)(2)(A)(i), 434(a)(6)(A), 434(b) or 441a(f).

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and AO 1978-30 (Utah's party primary convention was held to be an election due to a statutory provision which stated that whenever one candidate receives at least seventy percent of the votes cast "he shall become the party's candidate in the next general election without the necessity of running in the primary election.")

2. Approve the attached letters to Alwin E. Hopfmann, Senator Kennedy, and the Committee to Re-Elect Senator Kennedy.

3. Close the file.

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALWIN E. HOPFMANN,

Plaintiff

v.

FEDERAL ELECTION COMMISSION,
et al.,

Defendants

Civil Action No. 82-3667

MEMORANDUM OPINION

Plaintiff, Alwin E. Hopfmann seeks review of the Federal Election Commission's ("Commission" or "FEC") dismissal of his administrative complaint alleging that Senator Edward Kennedy and the Committee to Re-Elect Senator Kennedy ("Committee") violated provisions of the Federal Election Campaign Act ("FECA" or "Act") relating to reporting requirements

and contribution limitations. 2 U.S.C. Secs. 434(a), (b), and 441(f). Plaintiff's request for review presents two issues: whether the FEC decision is "contrary to law"; whether plaintiff's constitutional challenges merit certification to the United States Court of Appeals.[1] For the following reasons, this Court affirms the FEC decision, finding that it was proper and correct, and declines to certify plaintiff's constitutional challenges to the United States Court of Appeals.

Plaintiff Hopfmann was a participant in the Massachusetts Democratic Party's pre-primary convention held in May, 1982. Among its purposes, the convention

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[1] The two relevant provisions of the statute are discussed infra at pages 5 and 7.

was to endorse those candidates who received at least 15% of the votes from party delegates. Under Massachusetts law, only those candidates with 15% support from their party can be placed on the ballot fro the primary election. Mass. Gen. Laws Ann., Ch. 53, Sec. 44 (West 1975). The incumbent Senator Kennedy was the sole candidate to receive 15% of the convention votes, consequently, only his name was placed on the ballot for the September 1982 primary election.

Plaintiff filed a complaint with the Federal Election Commission in September 1982, asserting that the earlier convention of May satisfied the criteria of an "election" as defined in the Act, and therefore Senator Kennedy and the Committee violated certain reporting

requirements of the Act pertaining to elections. Section 431(1)(B) of the Act defines "election" as follows:

> The term "election" means ... a convention or caucus of a political party which has authority to nominate a candidate.

(emphasis added). Plaintiff claimed that since the convention vote resulted in the exclusive endorsement of Senator Kennedy (and consequently only his name appeared on the September primary election ballot), the convention in fact had authority to nominate a candidate and thus was an "election" under the Act.

Numerous motions have been filed by both parties in this case,[3] and the

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[3] The FEC moved to dismiss for lack of jurisdiction, insufficiency of process and failure to prosecute. The Court denies this motion finding that the complaint was timely filed, and that defendant has failed to show that the relatively brief delay in service of

plaintiff has chosen an unusual series of motions to advance his complaint against the FEC.[4] In this opinion the Court addresses defendant's motion for summary judgment regarding the FEC decision, and defendant's motion to dismiss plaintiff's

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process would justify dismissal. See, e.g., Prudential Lines, Inc. v. Marine Repair Services, Inc., 94 F.R.D. 325 (E.D.N.Y. 1982).

[4] A number of plaintiff's motions are not germane to the central issues, nor are they based on any coherent legal theory. For example, plaintiff's motion of May 31, 1983 for "Continuancce Until Discovery Can be Completed" is completely inappropriate because this Court's review under section 437g is based on the record before the Commission at the time it made its decision. Discovery is likewise inappropriate to determine the merits of plaintiff's constitutional challenges.

Plaintiff's motion of July 26, 1983, requesting leave to add certain additional parties, and of July 29, 2983, requesting clarification of what constitutes the "pleadings" under the statute, also lack merit.

constitutional challenges.

A.

First, this Court considers plaintiff's challenge to the dismissal of his complaint. The standard of review is explained in section 437(a)(8)(C):

> (T)he court may declare that dismissal of the complaint ... is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which thge complainant may bring ... a civil action to remedy the violation involved in the original complaint. The primary election contest in Massachusetts does not in any circumstances terminate with the vote of the party's convention delegates. Massachusetts still holds a primary election. Certification that a candidate is his or her party's nominee must await the results of the primary contest. The contest is not a hollow procedure because the Massachusetts General Laws provide for write-in campaigns.

Report at 5. He further explained that although Senator Kennedy was the only

candidate to receive the convention's endorsement for the primary election, "until the voters spoke at the polls in September, there was no Democratic Party nominee for the U.S. Senate from Massachusetts." Id. at 6. Thus, because the convention did not satisfy the criteria of an "election" under the Act, the General Counsel concluded that Senator Kennedy and the Committee had not violated the Act's reporting requirements.

This Court finds that the decision of the FEC dismissing plaintiff's complaint was reasonable in light of the General Counsel's report. Furthermore, the plaintiff's arguments challenging the Commission's decision are without merit. Plaintiff asserts that the FEC has given no reason for its decision, but that is

not true. The General Counsel's Report adequately sets out the reasons upon which the FEC's decision is based. Furthermore, it is apparent that plaintiff's contentions were considered, and that the FEC's decision is consistent with its previous decisions. For the foregoing reasons, this Court finds that the FEC's decision was "sufficiently reasonable" to merit this Court's deference.

B.

The plaintiff's request for certification of his constitutional challenges is brought under Sec. 437h of the Act which provides:

> (A)ny individual eligible to vote in any election for the office of President ... may institute such actions in the appropriate [federal] district court ..., including actions for declaratory judgment, as

> may be appropriate to construe the constitutionality of any provision of the Act. The district court immediately shall certify all questions of constitutionality ... to the court of appeals for the [federal] circuit involved.

Plaintiff argues that this provision requires the Court to certify his constitutional challenges to the United States Court of Appeals without regard to the merit of his claims. However, in California Medical Assn. v Federal Election Commission, 453 U.S. 182, 193-194 n. 14 (1981), the Supreme Court plainly stated, "(W)e do not construe Sec. 437h to require certification of constitutional claims that are frivolous ... " (citing Gifford v. Congress, 452 F.Supp. 802 (E.D. Ca. 1978)). Furthermore, in Mott v. Federal Election Commission, 494 F. Supp. 131, 134

(D.D.C. 1980), the court found that review of a complaint to determine whether it presents a ripe and substantial controversy is appropriate before certifying questions purusant to Sec.-437h.

After careful consideration, this Court concludes that plaintiff's challenges do not raise substantial constitutional questions, are frivolous and are not based on any coherent legal theory. He asserts a wide range of challenges to the Act: (1) that it violates Article I of the Constitution and the Seventeenth Amendment by regulating the times, places, and manner of holding elections for United States senators; (2) abridges plaintiff's rights to due process by not affording him a full hearing before the FEC; (3) denies plaintiff equal protec-

tion of the laws by protecting the incumbent politician; (4) violates the "case or controversy" requirement of the Constitution by allowing the Commission to rely on earlier FEC advisory opinions in its decision making process; (5) violates the First Amendment because the Act prevents an individual who is a losing candidate in a political election from petitioning for redress in the courts; (6) violates the Seventh Amendment by denying plaintiff a jury trial on his complaint.

Plaintiff's allegations that the FEC has violated Article I of the Constitution and the seventeenth Amendment are groundless. The fact is that the state of Massachusetts determines the time, place and manner of its elections, not the FEC. Plaintiff has thus failed in

his attempt to convince thi8s Court that the FEC has violated the doctrine of separation of powers or the Seventeenth Amendment by finding that the Massachusetts Democratic Convention was not an "election" under the Act. Similarly, plaintiff's due process challenge must fall because he claims the right to an adversarial proceeding when in fact the FEC proceedings do not determine an individual's individual legal rights. See Hannah v. Larche, 363 U.S. 420, 441-42 (1980). Also plaintiff's arguments alleging that he has been denied equal protection of the laws is without merit. Beyond a bare assertion, he provides no factual basis for his allegations that the FEC's decision was intended to "protect the incumbent." Furthermore, this type of equal protec-

tion claim previously has been rejected by the Supreme Court. See Buckley v. Valeo, 424 U.S. 1, 96 (1976).

His complaint about the FEC's use of advisory opinions is meritless and overlooks the fact that the United States Court of Appeals for the District of Columbia has approved the use of such opinions insomuch as they contribute to consistency in the administrative process. See Martin Tractor Co., v. Federal Election Commission, 627 F.2d 375, 384 (D.C. Cir. 1980), cert denied sub nom. National Chamber Alliance for Politics v. Federal Election Commission, 449 U.S. 954 (1980). Likewise, plaintiff's First Amendment claim is frivolous because the FECA provides for judicial review under Sec. 437g(a)(8)(C), and for certification of constitutional claims

under Sec. 437h, to facilitate access to the courts, not to prevent it. Finally, plaintiff's claim under the Seventh Amendment is without merit under Lehman v. Nakshian, 453 U.S. 156 (1981). There the Supreme Court stated that a "plaintif in an action against the United States has a right to trial by jury only where Congress has affirmatively and unambiguously granted that right by statute." Id. at 168 (emphasis added). The FECA does not provide for jury trials and thus the plaintiff's Seventh Amendment challenge must fail.

CONCLUSION

For the reasons set out above, the plaintiff's request for review and judicial relief by this Court are denied. An appropriate order dismissing

the complaint will be entered.

March 8, 1984

Barrington D. Parker

United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-1317

ALWIN E. HOPFMANN, Plaintiff,

v.

U.S. FEDERAL ELECTION COMMISSION,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before: EDWARDS, SCALIA, and STARR,
Circuit Judges

JUDGMENT

This case was reviewed on the record on appeal from the United States District Court for the District of Columbia and was briefed by counsel for the parties. The court has accorded full consideration to the issues presented and concludes the the appeal occasions no need for a published opinion. See D.C. Cir. R. 11-

(d), 13(c). For the reasons stated in the accompanying memorandum, it is

ORDERED and ADJUDGED, by this court, that the judgment from which this appeal has been taken is affirmed; and, it is

FURTHER ORDERED, by this court, that appellee's (FEC) motion for reasonable attorneys' fees and costs is granted, with the fees and costs to be fixed by a separate order. Appellee (FEC) will file with the clerk within 30 days a memorandum, listing fees and costs supported by affidavits and other appropriate materials.

It is ORDERED, by this court, on its own motion, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See Local Rule 14, as amended on November 30,

1981, and June 15, 1982. This instruction to the Clerk is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

Per Curiam
FOR THE COURT

GEORGE A. FISHER
Clerk

No. 84-5207 Hopfmann v. U.S. Federal Election Commission, et al.

MEMORANDUM

Per Curiam: This is an appeal from the District Court's dismissal of Alwin E. Hopfmann's complaint against the Federal Election Commission (FEC). Mr. Hopfmann's claims stem from the adopption by the Democratic Party of Massachusetts, in 1982, of a "fifteen percent rule," by which a candidate for United States Senator who did not receive fifteen percent of the vote at the state

Democratic Convention would not be placed on the primary election ballot. Mr. Hopfmann sought to be Massachusetts' Democratic candidate for United States Senator in 1982. He did not, however, receive the requisite fifteen percent of the votes at the 1982 state convention. Accordingly, Mr. Hopfmann's name was not placed on the ballot. Only Senator Edward Kennedy received the requisite number of convention votes.

Appellant subsequently filed a complaint with the FEC, contending that the 1982 state convention constituted an "election" within the meaning of 2 U.S.C. Sec. 431(1)(B). Based upon that legal premise, appellant advanced the claim that Senator Kennedy had violated the reporting provisions of the Federal Election Campaign Act of 1971. Mr. Hopf-

mann further claimed that the state procedures by which Senator Kennedy was nominated were unconstitutional.

The FEC dismissed Mr. Hopfmann's complaint. Mr. Hopfmann then filed the instant action in the United States District Court for the District of Columbia, which dismissed his complaint on March 8, 1984. This appeal followed.

We conclude that Mr. Hopfmann's claims are without merit. The FEC has consistently held that in order for a convention to constitute an "election" under 2 U.S.C. 431(1)(B), the convention must actually nominate a candidate, rather than, more limitedly, narrow the field of candidates on the primary ballot. The FEC's interpretation contradicts neither the statutory language nor the legislative history, and

represents a reasonable and permissible agency construction. Inasmuch as write-in candidates were permitted by state law in the 1982 Massachusetts primary, Senator Kennedy did not secure the Democratic nomination until he won the party's primary. In consequence, the Massachusetts Democratic Convention of 1982 was not an "election" under thge Federal Election Campaign Act.

As to Mr. Hopfmann's constitutional claims, it is not within the FEC's province to determine whether Massachusetts' primary system satisfies the federal Constitution. That is a claim that Mr. Hopfmann must make, if at all, to the courts; we take note in this respect of an adverse decision in litigation brought by Mr. Hopfmann

claiming that the Massachusetts system was unconstitutional. Hopfmann v. Connolly, 746 F.2d 97 (1st Cir. 1984).

Quite apart from the merits, we would conclude in any event that the appeal should properly be dismissed in view of appellant's failure to comply with orders of this court. Under our order entered on May 14, 1984, appellant's brief and joint appendix were required to be filed by June 25, 2984. Although appellant timely filed his brief, he failed to file the joint appendix in accordance with the timetable established by the May 14, 1984 order. He also failed to respond to two written inquiries from counsel to the FEC in advance of the June 25, 2984 deadline with respect to serving a designation of appendix on the Commission. On June 22,

1984, appellant filed a motion to defer filing of the appendix. This court denied the motion on July 23, 1984 and ordered appellant to designate with specificity the documents to be included in the joint appendix within ten days of the order. The order further directed that the appendix was to be filed on or before August 20, 1984. Appellant again failed to comply with that order.

The Commission moved to dismiss this appeal on August 24, 1984, prompting appellant to file a memorandum of opposition filled with invective and scurrilous comments. Other than utterly inappropriate bombast, the opposition made two points: namely that the delay was not significant and that dismissal of the appeal would be "harsh remedy." The undisputed fact remains, however, that

appellant failed to comply with two orders of the court and failed to advance any substantial justification for his failure. As a result, dismissal would be appropriate under Fed. R. App.P.3(a). Notwithstanding this, and in view of the completion of the briefing cvycle and our having considered the merits of this case, we conclude that the appeal is in any event utterly without merit and thus affirm the judgment of the District court. We firmly admonish counsel for appellant to refrain in any future filings in this court from engaging in unprofessional, inappropriate comments and outrageous name-calling. Vigorous argumentation for one's position is one thing; ad hominem attacks are quite another. Any future instance will not be countenanced.

In addition, we find that this appeal was so meritless as to be frivolous. Not only was the appellant's statutory argument unsupported by law, but appellant also chose to make many constitutional claims, all of which were patently without merit. "Appellate courts are burdened by a heavy volume of business and the problem is needlessly aggravated when frivolous appeals are taken." Furbee v. Vantage Press, Inc., 464 F.2d 835, 837 (D.C. Cir. 1972). Therefore, under Fed. R. App. P. 38 and 28 U.S.C. Sec.1912, we grant the FEC's motion for reasonable attorneys' fees and costs. See Furbee, 464 F.2d at 837; Seagull Mfg. Co. v. NLRB, 735 F.2d 971 (6th Cir. 1984); United States v. Potamkin Cadillac Corp., 689 F.2d 379, 382 (2d Cir. 1982). The FEC will file

with the clerk within 30 days a memorandum, supported by affidavits and other appropriate materials. The fees and costs will be fixed by a separate order.

UNITED STATES COURT OF APPEALS
For the District of Columbia

No. 84-5144 September Term 1983

In Re: CA 82-03667

Alwin E. Hopfmann,
Petitioner

No. 84-5207

Alwin E. Hopfmann,
Appellant

v.

United States Federal
Election Commission, et al

Before: Tamm, Edwards and Starr,
Circuit Judges

O R D E R

Upon consideration of appellant's several motions requesting that his appeal be heard by the Court en banc either immediately or expeditiously, appellant's petition for a writ of prohibition and/or mandamus and appellee's opposition, it is

ORDERED, by the Court, that appellant's motions be denied. Appellant has failed to demonstrate as a threshold matter that the district court erred when it declined to certify appellant's constitutional challenges pursuant to 2 U.S.C. Sec. 437h (1982). See California Medical Association v. FEC, 453 U.S. 182. 193-94 n. 14 (1981) ("[W]e do not construe Sec. 437h to require certification of constitutional claims that are frivolous . . .). See also Martin Tractor v. FEC, 627 F.2d 375 (D.C. Cir.), aff'g 460 F. Supp. 1017 (D.D.C. 1978), cert. denied, 449 U.S. 954 (1980), aff'd mem. sub nom. National Conservative Political Action Committee v. FEC, 627 F.2d 896 (D.C. Cir. 1981). Appellant's other motions seeking expedited en banc consideration pursuant to Rule 27 of the

Federal Rules of Appellate Procedure and D.C. Cir. R.6 lack merit and are therefore denied. Moreover, we do not view appellant's submissions as a proper application for initial hearing en banc pursuant to Fed. R. App. P. 35. Denial of these motions is without prejudice to the merits of any arguments appellant may propound during the ordinary course of this appeal. Finally, because this appeal affords appellant "adequate means to attain the relief he desire," Kerr v. United States, 426 U.S. 394, 403 (1976) (denying mandamus), it is

FURTHER ORDERED, by the Court, that appellant's petition for issuance of a writ of mandamus and/or prohibition be denied. See also In re Chicago, Rock Island & Pacific Ry., 225 U.S. 273 (1921) (denying prohibition).

Per Curiam

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

October 19, 1984

Laurence A. Elgin, Esq.
2762 Woodley Place, NW
Washington, DC 20008

RE: Alwin E. Hopfmann v. United States Federal Election Commission, et al.
No. A-272

Dear Mr. Elgin:

Your application for a stay in the above-entitled case has been presented to the Chief Justice, who has endorsed thereon the following:

"Denied
WEB
10/19/84."

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By

Francis J. Lorson

Chief Deputy Clerk

gtb

cc: Hon. Rex E. Lee, Solicitor General

OPINION OF THE JUSTICES TO THE GOVERNOR, Supreme Judicial Court of Massachusetts. April 23, 1982. 385 Mass. 1201.

A question was propounded by the Governor of the Commonwealth of Massachusetts to the Justices of the Supreme Judicial Court with respect to the nomination of party candidates for placement on the state primary ballot. The Justices of the Supreme Judicial Court, gave answer that proposed mandatory statute providing that "Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination of the state primary" would abridge the constitutional rights of the party and its members to

associate while allowing candidates to be placed on the state primary ballot in contravention of the party's charter.

Question answered.

On April 23, 1982, the Justices submitted the following answers to questions propounded to them by the Governor.

To His Excellency, the Governor of the Commonwealth of Massachusetts:

The Justices of the Supreme Judicial Court respectfully respond to the question set forth in the Governor's request dated April 5, 1982, and transmitted to the Justices on April 6, 1982.

General Laws c. 53, § 44, as amended through St. 1981, c. 278, § 1, provides in part that "(t)he nomination of candidates for nomination at State primaries shall be by nomination papers." There is pending before the Governor for his approval

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House Bill No. 5852, which would amend c.53, § 44, by inserting after the first sentence the following sentence: "Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination at the state primary." Article Six, Section III, of the charter of the Democratic party of the Commonwealth of Massachusetts, provides "There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the

proviso that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election."

Stating his uncertainty "as to the necessity or constitutionality of H.5852 if enacted into law," the Governor requests, pursuant to the authority contained in Pt. II, c.3, art. 2, of the Massachusetts Constitution, as amended by art. 85 of the Articles of Amendment, the opinion of this court on the following questions of law:

> "1. Does the fifteen percent rule in the Democratic Charter supersede the current provisions of General Law, Chapter 53, Section 44, or can a candidate be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of

the vote at the party convention?

"2. Would enactment of H.5852 allow a candidate to be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of the vote at the party convention?"

The constitutional provision which empowers us to answer questions propounded by the Governor, the Council, and the Legislature, restricts our authority to "important questions of law" and to "solemn occasions." Part II, c. 1, § 1, art. 2 of the Massachusetts Constitution. To preserve the principle of separation of powers, fundamental in our system of government, we are bound strictly to observe these constitutional limitations. Answer of the Justices, 362 Mass. 914, 916-917, 291 N.E. 2d 598 (1973). As the Justices have ad-

vised, "By a solemn occasion the Constitution means some serious and unusual exigency. It has been held to be such an exigency when the Governor or either branch of the Legislature having some action in view has serious doubt as to their power and authority to take such action, under the Constitution, or under existing statutes." Answer of the Justices, 373 Mass. 867, 871, 366 N.E. 2d 730 (1977), quoting from Answer of the Justices, 148 Mass. 623,625-626, 21 N.E. 439 (1889).

(1) Because question number 1 inquires only about the legal effect of the current statute in light of the Democratic party charter, and not about the Governor's authority to take action, there is no solemn occasion authorizing us to answer. Opinion of the Justices, ___ Mass. ___, ___ - ___, Mass.Adv. Sh.

(1981) 1361, 1381-1382, 424 N.E. 2d 1092. It may well be that the Justices' answer to question number 1 would help the Governor determine the "necessity" of House No. 5852 in view of the present statute, a concern expressed in the request. However, whether the bill is necessary raises the question whether it is wise or expedient for the Governor to approve the bill. The Justices are not empowered to answer questions bearing on the wisdom or expediency of proposed legislation. Answer of the Justices, 319 Mass. 731, 734, 66 N.E. 2d 358 (1946). Opinion of the Justices, 314 Mass 767, 771-772, 49 N.E. 2d 252 (1943). Not having the authority to answer question number 1, we respectfully request that we be excused from answering it.

In the context of the Governor's expressed uncertainty as to the constitutionality of House No. 5852, we interpret question number 2 to inquire whether, if House No. 5852 were approved, G.L. c. 53, § 44, as thereby amended, would abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party's charter. The Governor has a present duty to act on House No. 5852. Part II, c. 1 § 1, art. 2, of the Massachusetts Constitution. This duty, and the Governor's expressed doubt about whether House No. 5852 would be constitutional if he approved it, present a solemn occasion requiring our answer to the second question. See Opinion of the Justices, 314 Mass. 767, 772, 49 N.E. 2d

252 (1943)

"The (Democratic Party of the Commonwealth) and its adherents enjoy a constitutionally protected right of political association. 'There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments ... . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom.' Kusper v. Pontikes, 414 U.S. 51, 56-57, 94 S.Ct. 303, 307, 38 L.Ed.2d 260 (1973). 'And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.' Williams v.

Rhodes, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10-11, 21 L.Ed. 2d 24 (1968). Moreover, '(a)ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.' Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1211, 1 L.Ed.2d 1311 (1957); see NAACP v. Button, 371 U.S. 415, 431, 83 S. Ct. 328, 337, 9 L.Ed.2d 405 (1963)." Cousins v.Wigoda, 419 U.S. 477, 487-488, 95 S.Ct. 541, 547, 42 L.Ed.2d 595 (1975). "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." Democratic Party of U.S. v. Wisconsin, 450 U.S. 107, 122n22, 101 S.Ct. 1010, 1019, 67 L.Ed.2d 82 (1981), quoting L. Tribe, American Constitutional Law 791

(1978). A determination of who will appear on a general election ballot as the candidate endorsed by an identified political party is a critical decision for that party. The party, therefore, has a substantial interest, implicit in its freedom of association, to ensure that party members have an effective role in that decision. Democratic Party of U.S. v. Wisconsin, supra.

Within the Commonwealth, the winner by a plurality of a party primary becomes that party's candidate for statewide office in the general election. G.L. c 53, § 2. Voting in party primaries is limited to enrolled party members and unenrolled voters who enroll at the polls just before receiving ballots. G.L. c. 53, § 37. Apart from Article Six, Section III, of the State Democratic party charter, in order to be placed on a party's primary

ballot, a candidate for statewide office must be an enrolled member of that party, G.L. c. 53, § 48, and submit nominating papers signed by at least 10,000 registered voters, c. 53, § 44, who may be enrolled in that party or unenrolled. G.L. c. 53, § 46. Therefore, apart from Article Six, section III, of the State Democratic party charter, a candidate for statewide election could be placed on the Democratic party ballot and win the primary, thus becoming entitled to be placed on the general election ballot as the Democratic party candidate, with little or no support from the regular party membership.[1/]

1/ As of February, 1980, 39.9% of all registered voters in the Commonwealth were unenrolled. Bachrach v. Secretary of the Commonwealth, ___ Mass. ___, ____, Mass.Adv.Sh.(1981) at 97 415 N.E.2d 832.

The State Democratic party charter, Article Six, Section III, proviso that any nominee who receives at least 15% of the vote at the State convention may challenge the convention endorsement, by negative implication adds to the statutory requirement of nomination papers for placement on the primary ballot the further requirement that a candidate must receive at least fifteen percent of the convention vote. This has the double effect of limiting the number of candidates on the primary ballot, thereby eliminating the confusion that may result from too many candidates, and of limiting the candidates to those with significant party support, thereby giving the party members an effective role in choosing the party's candidate in the general election. The State has been held to have a compelling

interest in limiting the number of candidates in order to prevent voter confusion. American Party of Texas v. White, 415 U.S. 767, 780-781, 94 S.Ct. 1296, 1305-06, 39 L.Ed.2d 744 (1974). Storer v. Brown, 415 U.S. 724, 732, 94 S.Ct. 1274, 1280, 39 L.Ed. 2d 714 (1974). A political party has a parallel interest.

If House No. 5852 were approved, G.L. c. 53, § 44, as thereby amended, would appear to override the charter requirement of 15% of the convention vote for placement on the primary ballot and, together with c. 53, § 46, would eliminate the Democratic party's control of who its candidate in the general election would be. This would substantially infringe the right of freedom of association of the Democratic party and its members, and therefore, to pass constitutional

muster, it must serve a compelling State interest, Sears v. Secretary of the Commonwealth, 369 Mass. 392, 397, 341 N.E. 2d 264 (1975), and do so with as little infringement on constitutional rights as possible. See Riddell v. National Democratic Party, 508 F.2d 770, 776-778 (5th Cir. 1975). We must apply "strict scrutiny" to its justification and operation. Bachrach v. Secretary of the Commonwealth, ___ Mass. ___, ___, Mass.Adv.Sh. (1981) 93, 101, 415 N.E.2d 832.

The Commonwealth unquestionably has a compelling interest in the overall regularity of the election process, including limitation of the number of candidates on the ballot so as to avoid voter confusion and ensuring that the candidates whose names appear on the ballot have significant community support.

American Party of Texas v. White, 415 U.S. 767, 782, 94 S.Ct. 1296, 1306, 39 L.Ed.2d 744 (1974). This applies to the conduct of primary elections, Kusper v. Pontikes, 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973), Rosario v. Rockefeller, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d L (1973), which are an important part of the procedure by which the ultimate office holder is chosen. Sears v. Secretary of the Commonwealth, supra, 369 Mass. at 398, 341 N.E.2d 264. These interests are served by the requirement that each candidate for statewide office obtain the signatures of at least 10,000 registered voters on nomination papers, G.L. c. 53, § 44, but they are not served by the elimination of a 15% convention vote requirement for placement on the primary ballot. Elimination of the Democratic party charter

requirement could only increase the number of candidates on the primary ballot, with a resulting increased potential for voter confusion.

We assume that House No. 5852 was designed to promote the integrity of the election process. Nevertheless, the Commonwealth's compelling interest in the integrity of the election process does not constitutionally justify elimination of party control over who the party's candidate in the general election will be. This view finds support in Democratic Party of U.S. v. Wisconsin, supra. In that case, the United States Supreme Court struck down a State statute that compelled the party to seat delegates at its national convention who were bound by the statute to vote on the first ballot with the results of a primary election in which any

registered voter could participate regardless of party affiliation. This was contrary to the national party rules. Wisconsin impermissibly attempted to override the national party's attempt to limit "those who could participate in the processes leading to the selection of delegates to their National Convention." Id. 450 U.S. at 122, 101 S.Ct. at 1019. General Laws c. 53, § 44, as it would be amended by House No. 5852, would attempt to override the State Democratic party's effort to ensure that regular party members have a substantial voice in the selection of its candidates for statewide office, and that, at least in conjunction with §§ 44, 46, and 37 of G.L. c. 53, is impermissible. If the law of the Commonwealth were to require that nomination papers be signed only by regular members

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of the party, contrary to c. 53, § 46, or that only regular members of the party may vote in the primary, contrary to c. 53, § 44, as it would be amended by House No. 5852, would be less intrusive on a political party's constitutional rights. However, we express no opinion on whether it would be sufficiently less intrusive to be constitutionally sound, since that is not the question before us, nor need we consider whether any proviso of the Constitution of the Commonwealth might prohibit the proposed enactment.

(2) We answer question number 2, as interpreted by us above, as follows: If House No. 5852 were approved, G.L. c. 53, § 44, as thereby amended, would abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the

Democratic State primary ballot in contravention of the party's charter.

The foregoing opinion is submitted by the Chief Justice and the Associate Justices subscribing hereto on the 23rd day of April, 1982.

EDWARD F. HENNESSEY

HERBERT P. WILKINS

PAUL J. LIACOS

RUTH I. ABRAMS

JOSEPH R. NOLAN

NEIL L. LYNCH

FRANCIS P. O'CONNOR

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 84-5207 September Term 1984

Alwin E. Hopfmann, Civil Action 82-03667

Appellant

v.

United States Federal

Election Commission,

et al.

Before: WILKEY*, WALD and STARR

Circuit Judges

O R D E R

Upon consideration of appellee's (FEC) motion to dismiss appeal and to award costs and attorneys' fees, and of the opposition thereto, it is

ORDERED, by the Court, that appellee's (FEC) motion to dismiss is referred for disposition to the panel of judges that will be assigned to hear and

consider this case on the merits; and, it is

FURTHER ORDERED, by the Court, that appellee's motion to award costs and attorneys' fees is dismissed without prejudice to renewal after final disposition of this appeal.

Per Curiam

FOR THE COURT:

GEORGE A. FISHER

Clerk

*Circuit Judge Wilkey did not participate in the making of this order

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 84-5207 September Term, 1984

Alwin E. Hopfmann, CA 82-03667

Appellant

v.

United States Federal

Election Commission,

et al.

O R D E R

Upon consideration of the record, the briefs and all of the pleadings and proceedings had herein, and it appearing that the above case falls within the intent and purpose of Rule 11(d) of the General Rules of this Court, and also meets one or more of the criteria set forth in that Rule, it is

ORDERED, by the Court, that the

above case presently scheduled for May 7, 1985, will be considered and decided without oral argument.

Parties will be notified at a later date of the division of the Court considering this matter.

For the Court:

George A. Fisher, Clerk

By: Patricia L. Chatman

Deputy Clerk

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 84-5207 September Term, 1984

Alwin E. Hopfmann, Civil Action 82-03667

Appellant

v.

United States Federal

Election Commission,

et al.

O R D E R

Upon consideration for appellant's motion for leave to file a motion to defer preparation and filing of an additional portion of the appendix, and of appellee's motion to extend time to file brief, it is

ORDERED that the Clerk is directed to file appellant's motion to defer appendix pursuant to FRAP 30(c) and

appellant's motion to defer appendix pursuant to FRAP 30(c) is granted and the Clerk is further directed to file the appendix (Vols. I, II, III), and it is

FURTHER ORDERED that the following briefing schedule is established:

Appellee's brief November 30, 1984

Appellant's reply brief, if any December 14, 1984

The Clerk shall include this case in the pool of cases available for selection on this Court's February, 1985 callendar.

FOR THE COURT:

GEORGE A. FISHER

Clerk

UNITED STATES COURT OF APPEALS

For the District of Columbia District

No. 84-5207 September Term, 1983

Alwin E. Hopfmann, Civil Action 82-03667

Appellant

v.

United States Federal

Election Commission,

et al.

Before: WRIGHT, Acting Chief Judge

O R D E R

Upon consideration of appellant Hopfmann's motion for leave to file a deferred appendix, of appellees' motion for leave to file out of time their opposition thereto, and of appellees' lodged opposition, and it appearing that appellant's counsel has not taken the customary steps to assure the preparation of an appropriate appendix, it is

ORDERED, by the Court, that appellees' motion for leave to file an opposition to the pending motion out of time is granted and the Clerk is directed to file appellees' lodged opposition; and it is

FURTHER ORDERED, by the Court, that appellant Hopfmann's motion for leave to file a deferred appendix is denied. Appellant is directed to designate, within ten days fromt he date of this order, and with specificity, the documents he intends to include in the appendix, and to afford appellees ten days within which to serve a counter designation. Appellant shall file the appendix on or before August 20, 1984; and, it is

FURTHER ORDERED, by the Court, that the briefing schedule herein is revised as follows:

Appellees' brief September 19, 1984

Appellant's reply October 3, 1984
brief, if any

The Clerk shall retain this case in the pool of cases available for selection on the Court's November-December, 1984 calendar.

Per Curiam

FOR THE COURT

GEORGE A. FISHER

Clerk

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 84-5207 September Term, 1984

Alwin E. Hopfmann CA No. 82-03667

v.

Federal Election Commission, et al.

BEFORE; Edwards, Scalia and Starr,

Circuit Judges

O R D E R

Upon consideration of this Court's judgment of May 13, 1985, and of the memorandum of the Federal Election Commission for costs and attorneys' fees, it is

ORDERED, by the Court, that costs and attorneys' fees in the amount of $3,578.90 are awarded to the Commission and taxed against Alwin E. Hopfmann.

The Clerk is directed to transmit a certified copy of this order to the

District Court.

Per Curiam

FOR THE COURT,

GEORGE A. FISHER, CLERK

BY: Robert A. Bonner

Chief Deputy Clerk

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS WHICH THE CASE INVOLVES

Constitutional Provisions:

Art.I, Sec.4, Cl.1, the "Times, Places and Manner Clause:

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of chusing Senators."

Art.I, Sec. 5, Cl.1:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,..."

Art.I, Sec.6, Cl.2:

"and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office."

Art.I, Sec.8, Cl.9:

"The Congress shall have Power...to constitute tribunals inferior to the Supreme Court."

Art.II, Sec.1, Cl.1:

"The executive Power shall be vested in a President of the United States of America."

Art.II, Sec.1, Cl.:

"Before he [the President] enter on the Execution of his Office, he shall take

the following Oath or Affirmation:---'I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.'"

Art.III, Sec.1:

"The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Art.III, Sec.2, Cl.1, "case or controversy":

"The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,.."

Art.III, Sec.2, Cl.2:

"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Art.VI, Cl. 2, The "Supremacy Clause":

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or

Laws of any State to the Contrary notwithstanding."

First Amendment:

"Congress shall make no law ...abridging...the right of the people...to petition the government for the redress of grievances."

Fifth Amendment:

"No person shall...be deprived of life, liberty, or property, without due process of law"

Seventh Amendment:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Fourteenth Amendment:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, whithout due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

...

"But when the right to vote at any election for the choice of...the Executive and Judicial Officers of a state,...is denied to any of the male inhabitants of such Stte, being twenty-one years of age,

and citizens of the United States, or in any way abaaridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to th whole numbver of male citizens twenty-one years of age in such State."

Seventeenth Amendment:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof,... The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

Mass. Gen. Laws, Chpt. 53:
(Annotated Laws of Massachusetts, Lawyers' Co-op Authorized Edition)

"NOMINATION OF CANDIDATES

...

"Section 2. Nominations. How Made

"...candidates of political parties for all elective offices...shall be nominated...in primaries or caucuses....No candidates shall be nominated, and no member of a political committee or convention delegate in any other manner than is provided in this chapter....

...

"Editorial Note--

...

"The 1973 amendment struck out the exception for pre-primary conventions of political parties."

"PROVISIONS APPLYING TO ALL PRIMARIES

"Section 34. Ballots, Substance, Arrangement and Form.

...

"Except where vacancies caused by death, withdrawal of[sic] physical disability are filled, no names shall be printed on a ballot other than those presented on nomination papers.

...

"Immediately following the names of candidates on ballots at state and presidential primaries, where there are fewer names than there are persons to be chosen, blank spaces shall be provided, equal in number to the deficiency, for the insertion of other names.

...

"Editorial Note--

...

"The 1973 amendment rewrote this section, eliminating provisions relating to candidates endorsed for nomination at state conventions.

...

"PROVISIONS APPLYING TO STATE PRIMARIES.

...

"Section 41. Nominations at State Primaries; Sections Applicable.

"Primaries shall be held for the nomination of candidates of a political party for all offices to be filled at a state election, except presidential elector. Sections forty-two to fifty-three A, inclusive, shall apply to such primaries.

...

"Section 44. Nomination Papers. Number of Signatures.

"The nomination of candidates for nomination at state primaries shall be by

nomination papers. In the case of...United States senator, nomination papers shall be signed in the aggregate by at least ten thousand voters;...

...

"Editorial Note--

...

"The 1973 amendment struck from the first sentence the provision that nomination may be by endorsement for nomination at a state convention, and from the second sentence struck an exception "as hereinafter provided".

...

"PROVISIONS APPLYING TO PRE-PRIMARY CONVENTIONS.

...

"Section 54. [Repealed by 1973, 429, Section 5]

"Section 54A-54B. [Repealed, 1939, 473, Section 20.]

"Section 54C, 54D. [Repealed, 1973, 429, Section 5.]

...

Mass. Gen. Laws, Chpt. 54

...

"PREPARATION AND FORM OF BALLOTS.

...

"Section 41. Ballots, Names, Residences and Political Designations of Candidates.

"Ballots for the use of voters in a voting precinct, polling place or town shall contain the names of all candidates duly nominated for election therein, and, except as provided in section forty-three, they shall contain the names of no other person."

Massachusetts Acts, 1973 --Chap.429

"AN ACT REPEALING THE LAW PROVIDING FOR PRE-PRIMARY CONVENTIONS OF POLITICAL PARTIES.

"Be it enacted, etc. as follows:

...

"Section 2A. The first sentence of section 2 of chapter 53 of the General Laws, as most recently amended by section 1 of chapter 407 of the acts of 1966, is hereby amended by striking out, in lines 3 and 4, the words "and except as provided in section fifty-four.

...

"Section 4. Section 44 of said chapter 53 is hereby amended by striking out the first and second sentences and inserting in place therof the following two sentences:--

"The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of offices to be filled by all the voters of the commonwealth, nomination papers shall be signed in the aggregate by at least ten thousand voters.

"Section 5. Sections fifty-four, fifty-four C and fifty-four D of said chapter fifty-three are hereby repealed."

Article 6, Section III of the Charter of the Democratic Party of Massachusetts (1979), "The 15 Percent Rule":

"There shall be a State convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated by

the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent of the vote on any ballot for a particular vote may challenge the Convention endorsement in the State Primary Election."

2 U.S.C. 431(1)(B):

"When used in this Act: (1) The term 'election' means--...(B) a convention or caucus of a political party which has authority to nominate a candidate."

2 U.S.C. 431(8)(B)(ii),(iii),(iv),and (v):

"The term "contribution" does not include--

...

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year.

(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of any political committee of a politicalparty at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or bevarage to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed $1,000 with repect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year.

(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year.

(v) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot,or other printed listing, of 3 or more candidates for any public office which is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of

general public political advertising
...
(9)(B) The term 'expenditure' does not include--
(iii) any communication by any membership organization or corporation to its members, stockholders, or executiveor adminisrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be reported to the Commmission in accordance with section 304(a)(4)(A)(i), and in acordance with section 304(a)(4)(A)(ii) with respect to any general election."

2 U.S.C. 432(f)(2)"

"Each principal campaign committee shall receive all designations, statements, and reports required to be filed with it under paragraph (1) and shall compile and file such designations, statements, and reports in accordance with this Act."

2 U.S.C. 434(a)(1):

"Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

...

(2)(A)(i):

"a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election.

...

(6)(A):

"The principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution'"

2 U.S.C. 437c(A)(1):

"There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by

the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party."

2 U.S.C. 437d(a)(7):

"(a) The Commission has the power--

...

(7) to render advisory opinions under section 308 of this Act;

...

(9) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

...

(e) Except as provided in section 309(a)(8) of this Act, the power of the Commission to initiate civil actions under subsection (a)(6) of this section shall be the exclusive civil remedy for the enforcement of the provisions of this Act."

2 U.S.C. 437f:

"(a)(1) Not later than 60 days after the Commission receives from a person a complete written request concerning the application of this Act, chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or a rule or regulation prescribed by the Commission, with respect to a specific transaction or activity by the person, the Commission shall render a written advisory opinion relating to such transaction or activity to the person.

(2) If an advisory opinion is requested by a candidate, or any

authorized committee of such candidate, during the 60 day period before any election for Federal office involving the requesting party, the Commission shall render a written advisory opinion relating to such request no later than 20 days after the Commission receives a complete written request.

(b) Any rule of law which is not stated in this Act or in chapter 95 or cahpter 96 of the Internal Revenue Code of 1954 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 311(d). No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section.

(c)(1) Any advisory opinion rendered by the Commission under subsectin (a) may be relied upon by--

(A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraph (1) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this

Act or by chapter 95 or chapter 96 of the Internal Revenue Code of 1954.
(d) The Commission shall make public any request made under subsection (a) for an advisory opinion. Before renering an advisory opinion, the Commission shall accept written comments submitted by any interested party within the 10-day period following the date the request is made public."

2 U.S.C. 437g(a)(1),(2),(3) [1982-1983]:

(a)(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18, United States Code. Within 5 days after receipt of a complaint, the Commision shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a votd to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint of a person whose identity is not disclosed to the Commission.
(2) If the Commission, upon receiving a complaint under paragraph (10 or on the basis of informaion ascertained in the normal course of carrying out its supervisory responsibilities, determines,

by an affirmative vote of 4 of its members, that it ahs reason to believe that a person has committed or is about to commit, a violation of this Act or chapter 95 or chapter 96 of the INternal Revenue Code of 1954, the Commission shall, through its charman or vice charman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged vioilation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(1). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on such legal and factual issues of the case, and replying to the brief of general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

...

(4)(B)(i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

...

(8)(A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal.

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.

(9) Any judgment of a district court under this subsection may be appealed to the court of appeals, and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(10) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 310 of this Act.

...

(12)(A) Any notification or investigation made under this section shall not be made

public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(B) Any member or employee of the Commission,or anyother preson, who violates the provisions of subparagraph (A) shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than $5,000."

2 U.S.C. 437h:

"(a) The Commission, the national committee of any political party,or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.
(b) Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.
(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible

extent the disposition of any matter certified under subsection (a).

28 U.S.C. 1915, the In Forma Pauperis Statute "frivolity provision"

"(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

28 U.S.C. 1652, the Rules of Decision Statute:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in all civil actions in the courts of the United States, in cases where they apply."